



# H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2020 Semiannual Report to Congress  
Part 1: April 1, 2019 – March 31, 2020



Homeland  
Security

*U.S. Citizenship and  
Immigration Services*



**Homeland  
Security**

September 14, 2020

## Foreword

On behalf of the U.S. Department of Homeland Security, I am pleased to present the first of two semiannual reports for Fiscal Year 2020 on “H-2B Nonagricultural Temporary Worker Visa and Status.”

Pursuant to statutory requirements, this report is being provided to the following Members of Congress:

The Honorable Lindsey Graham  
Chairman, Senate Committee on the Judiciary

The Honorable Dianne Feinstein  
Ranking Member, Senate Committee on the Judiciary

The Honorable Jerrold Nadler  
Chairman, House Committee on the Judiciary

The Honorable Mary Gay Scanlon  
Vice Chair, House Committee on the Judiciary

The Honorable Jim Jordan  
Ranking Member, House Committee on the Judiciary

Inquiries relating to this report may be directed to me at (202) 447-5890.

Sincerely,

A handwritten signature in blue ink that reads "Beth Spivey". The signature is written in a cursive, flowing style.

**BETH SPIVEY**  
Assistant Secretary for Legislative Affairs

# Executive Summary

The U.S. Department of Homeland Security (DHS) has compiled this report on H-2B nonagricultural temporary workers from information provided by the U.S. Department of State (DOS), U.S. Department of Labor (DOL), and three components within DHS: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE).

This report includes data for the second half of Fiscal Year (FY) 2019 and first half of FY 2020.

## Highlights

- The annual numerical limitation of 66,000 H-2B workers (the H-2B “cap”) was reached in FY 2019.
- In accordance with section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116-6 (FY 2019 Omnibus), an additional 30,000 H-2B visas were made available in FY 2019 to American businesses that attested they would likely suffer irreparable harm without the ability to employ all of their requested H-2B workers. These additional 30,000 H-2B visas were further limited and available only to returning workers who received an H-2B visa, or were otherwise granted H-2B status, in at least one of the preceding three fiscal years (FY 2016, FY 2017, or FY 2018). Pursuant to the FY 2019 Omnibus, USCIS approved supplemental cap petitions covering 33,132 H-2B.<sup>1</sup> However, the actual number of H-2B workers that were issued a visa did not exceed the supplemental cap. This increase was based on a time-limited statutory authority and does not affect the H-2B program in future fiscal years.
- During the second half of FY 2019, a total of 50,461 workers<sup>2</sup> were issued H-2B visas or otherwise acquired H-2B status.
- Under the regular H-2B cap, USCIS received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B workers for the first half of FY 2020 on November 15, 2019. A total of 42,417 workers<sup>3</sup> were issued H-2B visas or otherwise acquired H-2B status during the first half of FY 2020.

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<sup>1</sup> We recognize that this number exceeded the 30,000 made available under the supplemental cap. It is important to note that the process of estimating actual H-2B usage based on petition filings is inherently a predictive one. While USCIS uses its best efforts to estimate how many beneficiaries of cap-subject H-2B petitions will be granted H-2B visas, it is, as a practical matter, not possible in advance to determine that exact number and approval of an H-2B petition does not ensure that a worker covered by the petition will actually be granted H-2B status. In determining when it believes it has received a sufficient number of H-2B petitions such that the numerical limitation will be reached, but not exceeded, [USCIS](#) takes into account historical data related to actual visa approvals, denials, petition revocations, and other relevant factors.

<sup>2</sup> H-2B workers who are exempt from the H-2B cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half fiscal year or up to 10 days after the relevant period.

<sup>3</sup> H-2B workers who are exempt from the H-2B cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half fiscal year or up to 10 days after the relevant period.



# H-2B Nonagricultural Temporary Worker Visa and Status

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# I. Legislative Requirement

This report was prepared in accordance with section 416(d)(1) of the *American Competitiveness and Workforce Improvement Act of 1998*, Pub. L. No. 105-277, tit. IV, 112 Stat. 2681-655, as amended by section 406 of the *REAL ID Act of 2005*, Pub. L. No. 109-13, div. B, 119 Stat. 231, 320, which requires that:

Beginning not later than March 1, 2006, the Secretary of Homeland Security and the Secretary of State shall notify, on a semiannual basis, the Committees on the Judiciary of the House of Representatives and the Senate of the number of aliens who, during the preceding 1-year period –

(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act [(INA)] (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

(B) had such a visa or such status revoked or otherwise terminated.

## II. Background

### *Overview*

The H-2B program allows U.S. employers to bring foreign workers to the United States to fill temporary nonagricultural jobs. *See Immigration and Nationality Act (INA)*, as amended, § 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b). U.S. employers may bring foreign workers to the United States who are nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, have designated as eligible. One factor taken into account in designating countries as eligible is the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal. U.S. Citizenship and Immigration Services (USCIS) may, however, approve H-2B petitions for nationals of countries that are not on the eligible country list, if such approval is determined to be in the interest of the United States.<sup>4</sup>

To petition successfully for this nonimmigrant classification, the employer must establish that:

- its need for the prospective worker's labor or services is temporary in nature—that is, based on a one-time occurrence, a seasonal need, a peakload need, or an intermittent need;
- there are not sufficient U.S. workers who are able, willing, qualified and available to do the temporary work; and
- the employment of the H-2B nonimmigrant worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Generally, before filing a petition with USCIS for H-2B workers, the employer must obtain a single, valid temporary labor certification from DOL or, if the worker(s) will be employed in Guam, from the Governor of Guam. *See* 8 CFR § 214.2(h)(6)(iii)(A) and (C).

### *The H-2B Cap*

The *Immigration Act of 1990* limits the number of workers who may be granted H-2B classification in a fiscal year (the H-2B “cap”) to 66,000. *See* INA § 214(g)(1)(B), 8 U.S.C. § 1184(g)(1)(B). Subsequently, section 405 of the *REAL ID Act of 2005* mandated that the H-2B cap be allocated semiannually, allowing for up to 33,000 H-2B workers in the first half of the fiscal year (October 1 – March 31), and for the remaining H-2B visas to be allocated to workers during the second half of the fiscal year (April 1 – September 30). *See* INA § 214(g)(10), 8 U.S.C. § 1184(g)(10). USCIS will announce that it will no longer accept H-2B petitions upon determining that it has received a sufficient number of petitions to meet, but not exceed, the statutory caps. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.<sup>5</sup>

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<sup>4</sup> *See* 8 CFR 214.2(h)(6)(i)(E).

<sup>5</sup> *See* 8 CFR 214.2(h)(8)(ii) (effective April 1, 2019).

In accordance with section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116-6 (FY 2019 Omnibus), DHS and DOL jointly published a temporary final rule on May 8, 2019, authorizing up to an additional 30,000 H-2B visas for FY 2019 to American businesses that attested they would likely suffer irreparable harm without the ability to employ all of their requested H-2B workers.<sup>6</sup> These additional 30,000 H-2B visas were further limited and available only to returning workers who received an H-2B visa, or were otherwise granted H-2B status, in at least one of the preceding three fiscal years (FY 2016, FY 2017, or FY 2018). A total of 33,142 H-2B workers were approved on FY 2019 supplemental cap petitions. However, as noted above, the actual number of H-2B workers that were issued a visa did not exceed the supplemental cap. This increase was based on a time-limited statutory authority and does not affect the H-2B program in future fiscal years.

### ***Exemptions from the H-2B Cap***

Generally, a worker whose stay in H-2B status is extended will not be counted against the H-2B cap again. Additionally, the following workers are exempt from the H-2B cap:

- H-2B workers in the United States or abroad who have been previously counted toward the cap in the same fiscal year;
- Fish roe processors, fish roe technicians, and supervisors of fish roe processing;<sup>7</sup> and
- From November 28, 2009, until December 31, 2029, H-2B workers in the Commonwealth of the Northern Mariana Islands or Guam.<sup>8</sup>

Spouses and children of H-2B workers fall under a separate visa classification (H-4) and are not counted against the H-2B cap. *See* INA § 214(g)(2), 8 U.S.C. § 1184(g)(2); 8 CFR § 214.2(h)(8)(ii)(A). Once the H-2B cap is reached, USCIS may only, during the relevant cap period, accept petitions for H-2B workers who are cap-exempt. H-2B petition approvals on behalf of aliens who are exempt from the H-2B cap are included in the data provided in this report.

### ***Obtaining H-2B Status***

Approval of an H-2B petition does not ensure that a worker covered by the petition will actually be granted H-2B status. After USCIS approves an H-2B petition, a worker, if eligible, may be granted H-2B status through:

- admission as an H-2B worker by CBP at a port of entry after issuance of an H-2B nonimmigrant visa by DOS;

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<sup>6</sup> Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program*, 84 FR 20005, 20021 (May 8, 2019).

<sup>7</sup> *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

<sup>8</sup> *See* 48 U.S.C. 1806(a)(2) as amended by sec. 3 of Pub. L. 115-218; 48 U.S.C. 1806(b).

- admission as an H-2B worker by CBP at a port of entry without a visa, in the case of certain Canadians and Bermudan citizens, Bahamian nationals, and residents of certain Caribbean islands;<sup>9</sup> or
- change of status to H-2B or extension of H-2B status granted by USCIS.<sup>10</sup>

### III. Data Report and Analysis

#### Section 3.1 – H-2B Visas Issued and Status Provided

##### *Second Half of FY 2019*

During the second half of FY 2019,<sup>11</sup> 50,461 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 50,316 H-2B visas<sup>12</sup> issued by DOS;
- 53 workers that USCIS approved for a change of status to H-2B classification; and
- 92 crossings of visa-exempt H-2B workers<sup>13</sup> who were processed by CBP.

##### *First Half of FY 2020*

During the first half of FY 2020,<sup>14</sup> 42,417 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 39,107 H-2B visas<sup>15</sup> issued by DOS;
- 107 workers that USCIS approved for a change of status to H-2B classification; and
- 3,203 crossings of visa-exempt H-2B workers<sup>16</sup> who were processed by CBP.

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<sup>9</sup> See 8 CFR 212.1(a) for a list of aliens who are considered visa-exempt.

<sup>10</sup> Certain workers who have already been granted H-2B status are also eligible for an extension of stay. Note that an extension of stay in the H-2B classification will not be re-counted against the annual or semiannual cap.

<sup>11</sup> The second half of FY 2019 began on April 1, 2019 and ended on September 30, 2019.

<sup>12</sup> H-2B workers who are exempt from the H-2B cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to ten days after the relevant period.

<sup>13</sup> For the second half of FY 2019, all 92 crossings of visa-exempt H-2B workers came from Canada. See 8 CFR § 212.1(a) for a list of aliens who are considered visa-exempt. This figure may include multiple admissions by the same aliens.

<sup>14</sup> The first half of FY 2020 began on October 1, 2019 and ended on March 31, 2020.

<sup>15</sup> H-2B workers who are exempt from the H-2B cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to ten days after the relevant period.

<sup>16</sup> For the first half of FY 2020, all 3,203 crossings of visa-exempt H-2B workers came from Canada. See 8 CFR § 212.1(a) for a list of aliens who are considered visa-exempt. This figure may include multiple admissions by the same aliens.

**Table 1:** H-2B Workers Approved from April 1, 2019 to March 31, 2020

	<b>2<sup>nd</sup> Half of FY 2019</b>	<b>1<sup>st</sup> Half of FY 2020</b>	<b>Total</b>
<b>Total H-2B Workers Approved<sup>17</sup></b>	<b>50,461</b>	<b>42,417</b>	<b>92,878</b>
Visas Issued by DOS	50,316	39,107	89,423
Changes of Status Approved by USCIS	53	107	160
Visa-Exempt Admissions by CBP	92	3,203	3,295

## Section 3.2 – H-2B Visas or Status Revoked or Otherwise Terminated

### *Second Half of FY 2019*

During the second half of FY 2019, USCIS revoked or otherwise terminated 13 approved petitions, which had authorized the classification of 146 beneficiaries as H-2B workers.<sup>18</sup> During that period, CBP canceled the H-2B visas of 20 aliens who were found inadmissible at ports of entry, and ICE removed 113 H-2B aliens who were found removable after admission to the United States.<sup>19</sup>

DOS reported that it refused a total of 7,570 H-2B visa applications in the second half of FY 2019. There were 3,570 prior H-2B refusals which were overcome or waived and the visas granted. DOS thus refused a net total of 4,000 visa applications of H-2B workers in the second half of FY 2019.

The visa refusals cited in this section are not included in the figure for total H-2B visas issued as reported in Section 3.1.

### *First Half of FY 2020*

During the first half of FY 2020, USCIS revoked or otherwise terminated 7 approved petitions, which had authorized the classification of 158 beneficiaries as H-2B workers. During that period, CBP canceled the H-2B visas of 19 aliens who were found inadmissible at ports of entry, and ICE removed 121 H-2B aliens who were found removable after admission to the United States.<sup>20</sup>

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<sup>17</sup> H-2B workers who are exempt from the H-2B cap are included in these figures. These figures may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to ten days after the relevant period.

<sup>18</sup> This figure may include revocations or terminations after the approved validity of the H-2B petition and after the beneficiaries' authorized admission had already expired.

<sup>19</sup> ICE defines removed H-2B aliens as those aliens removed with a most recent admission class code of "H2" or "H-2B." As such, this figure may include aliens admitted in the H-2A classification as temporary or seasonal non-agricultural workers who could also have a most recent admission class code of "H2." ICE also indicates that admission class code is not a mandatory field, so this figure could be incomplete.

<sup>20</sup> ICE defines removed H-2B aliens as those aliens removed with a most recent admission class code of "H2" or "H-2B." As such, this figure may include aliens admitted in the H-2A classification as temporary or seasonal non-agricultural workers who could also have a most recent admission class code of "H2." ICE also indicates that admission class code is not a mandatory field, so this figure could be incomplete.

DOS reported that it refused a total of 6,141 H-2B visa applications. However, 1,733 of these visa applicants subsequently overcame the reason for visa denial and were granted H-2B visas. DOS refused a net total of 4,408 visa applications of H-2B workers in the first half of FY 2020.

The visa refusals cited in this section are not included in the figure for total H-2B visas issued as reported in Section 3.1.

**Table 2:** H-2B Revocations and Terminations

<b>Type of Revocation or Termination</b>	<b>2<sup>nd</sup> Half of FY 2019</b>	<b>1<sup>st</sup> Half of FY 2020</b>	<b>Total</b>
DOS (visa refusals)	4,000	4,408	<b>8,408</b>
USCIS (beneficiaries of revoked petitions)	146	158	<b>304</b>
CBP (cancelled visas)	20	19	<b>39</b>
ICE (removals)	113	121	<b>234</b>